



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 20, 1995

Mr. Steven M. Kean
Senior Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR95-1101

Dear Mr. Kean:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34131.

The City of Tyler (the "city") received a request for "any offense or incident reports" on two criminal charges: one for assault on March 4, 1995, and one for theft on January 5, 1995. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.

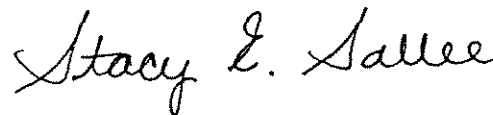
It appears from the documents submitted to this office that the Tyler Police Department received the request for information under the Open Records Act on May 18, 1995. You did not request a decision from this office until June 2, 1995. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301 of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

We conclude that compelling reasons except from disclosure two categories of information: social security numbers and criminal history report information ("CHRI"). Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal law may prohibit the disclosure of a person's social security number.¹ CHRI is protected under state law.² Therefore, the city may withhold the information we have marked on the documents submitted to us for review. As for the remainder of the requested information, you have not shown compelling reasons why the information at issue should not be released. The information is therefore presumed to be public and must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 34131

¹A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994); *see also* 42 U.S.C. § 405 (c)(2)(C)(i), (v)-(vi) (governing release of social security numbers collected in connection with administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

²Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, you must withhold the CHRI from the requestor.

Enclosures: Marked documents

cc: Mr. Tim Taylor
 Ramey Law Firm
 P.O. Box 629
 Tyler, Texas 75710
 (w/o enclosures)